IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

THOMAS E. SIMMONS,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD77246

MISSOURI COURT OF APPEALS WESTERN DISTRICT

DATE: April 28, 2015

APPEAL FROM

The Circuit Court of Jackson County, Missouri The Honorable J. Dale Youngs, Judge

JUDGES

Division III: Pfeiffer, P.J., and Witt and Gabbert, JJ.

CONCURRING.

ATTORNEYS

Amy M. Bartholow, Assistant Public Defender Columbia, MO

Attorney for Appellant,

Chris Koster, Attorney General Adam Rowley, Assistant Attorney General Jefferson City, MO

Attorneys for Respondent.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

| THOMAS E. SIMMONS, | |) | |
|--------------------|-------------|---|-----------------------|
| | Appellant, |) | |
| v. | |) | OPINION FILED: |
| | |) | April 28, 2015 |
| STATE OF MISSOURI, | |) | |
| | |) | |
| | Respondent. |) | |

WD77246 Jackson County

Before Division III Judges: Mark D. Pfeiffer, Presiding Judge, and Gary D. Witt and

Anthony Rex Gabbert, Judges

Thomas Simmons appeals the judgment from the Circuit Court of Jackson County, Missouri, denying, after an evidentiary hearing, his motion for post-conviction relief pursuant to Rule 24.035. On appeal, Simmons claims that the motion court clearly erred in refusing to grant his motion for post-conviction relief because his guilty pleas were not knowingly and intelligently entered.

AFFIRMED.

Division III holds:

The record in this case supports the motion court's finding that Simmons understood that when he entered his guilty pleas pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), he was forever giving up any rights he had to challenge the would-be trial court's denial of his motion to suppress the State's evidence against him, even should the United States Supreme Court decide a factually similar case then pending before it in his favor. The record also supports the motion court's finding that Simmons entered the *Alford* plea, not because he necessarily believed that he would have been convicted if he had not pled guilty and had gone to trial, but because in the event that he had been convicted, he would have faced a punishment far greater than he was receiving pursuant to his plea agreement with the State. Therefore, Simmons

was pleading guilty because he believed that the pleas were in his best interests. There was also an adequate factual basis for the guilty pleas, even though Simmons denied all of the charges against him, because the State established that the evidence it planned to present, which the trial court had indicated it was going to allow and not suppress, was sufficient evidence of Simmons's guilt, and Simmons waived any ability to challenge the admissibility of the evidence, even as providing a factual basis for his guilty pleas, when he entered the pleas.

Opinion by: Mark D. Pfeiffer, Presiding Judge

April 28, 2015

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